

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO. 3:20-CV-089-RJC-DCK**

MARIANO OSPINA,

Plaintiff,

v.

**LINO J. PIEDRA, and
GRIESINGER ASSOCIATES, INC.,**

Defendants.

**MEMORANDUM AND
RECOMMENDATION AND
ORDER**

THIS MATTER IS BEFORE THE COURT on Defendant Piedra’s “Response In Opposition To Plaintiff’s Statement Of Service Upon Defendant Lino J. Piedra And Motion To Dismiss Pursuant To Rule 12(b)(2), (b)(4), and/or (b)(5)” (Document No. 39), filed March 26, 2021, *pro se* Plaintiff’s “Motion For Leave To Amend Complaint” (Document No. 41), filed April 1, 2021, and *pro se* Plaintiff’s “Emergency Motion To Serve Defendant Lino J. Piedra” (Document No. 43), filed April 13, 2021. These motions have been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and immediate review is appropriate. In the interests of judicial economy and efficient case management, the undersigned will consider the motions together.

By the pending motions, Defendant seeks to dismiss all claims against him – contending that he has not been properly served – and Plaintiff seeks to amend his complaint and secure additional time for service on Defendant Piedra.

The undersigned is mindful of Plaintiff’s *pro se* status and the complexities inherent in understanding proper service of process. Moreover, Defendant Lino J. Piedra has apparently

moved from Colorado to Florida. See (Document No. 28). The undersigned will therefore grant Plaintiff one further extension of time to properly serve Defendant Piedra pursuant to Federal Rule of Civil Procedure 4(m). Given that Plaintiff is proceeding *in forma pauperis*, and pursuant to the Honorable Robert J. Conrad, Jr.'s Order of August 5, 2020 (Document No. 5), the U.S. Marshals Service will be instructed to properly serve Defendant Lino J. Piedra within 30 days of the date of this Memorandum And Recommendation And Order. Further extensions of time for service are unlikely to be allowed.

IT IS, THEREFORE, ORDERED that Plaintiff's "Emergency Motion To Serve Defendant Lino J. Piedra" (Document No. 43) is **GRANTED**. The Clerk of Court shall instruct the U.S. Marshals Service to serve process on Defendant Lino J. Piedra within 30 days of the date of this Memorandum And Recommendation And Order at **1670 Lincoln Ct. 5B, Miami Beach, FL 33139**. See (Document No. 28). All costs of service shall be advanced by the United States. Any recovery in this action will be subject to payment of fees and costs, including service of process fees and the \$400.00 filing fee.

IT IS FURTHER ORDERED that Plaintiff's "Motion For Leave To Amend Complaint" (Document No. 41) is **DENIED without prejudice**, pending the Honorable Robert J. Conrad, Jr.'s disposition of the undersigned's "Memorandum And Recommendation" (Document No. 26) and given the undersigned's foregoing order that the *pro se* Plaintiff be given a short extension of time – through the U.S. Marshals Service – to properly serve Defendant Piedra.

IT IS RECOMMENDED that Defendant Piedra's "Response In Opposition To Plaintiff's Statement Of Service Upon Defendant Lino J. Piedra And Motion To Dismiss Pursuant To Rule 12(b)(2), (b)(4), and/or (b)(5)" (Document No. 39) be **DENIED without prejudice**, pending the Honorable Robert J. Conrad, Jr.'s disposition of the undersigned's "Memorandum And

Recommendation” (Document No. 26) and given the undersigned’s foregoing order that the *pro se* Plaintiff be given a short extension of time – through the U.S. Marshals Service – to properly serve Defendant Piedra.¹

V. TIME FOR OBJECTIONS

The parties are hereby advised that pursuant to 28 U.S.C. § 636(b)(1)(C), and Rule 72 of the Federal Rules of Civil Procedure, written objections to the proposed findings of fact, conclusions of law, and recommendation contained herein may be filed within **fourteen (14) days** of service of same. Responses to objections may be filed within fourteen (14) days after service of the objections. Fed.R.Civ.P. 72(b)(2). Failure to file objections to this Memorandum and Recommendation with the District Court constitutes a waiver of the right to *de novo* review by the District Court. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005); United States v. Benton, 523 F.3d 424, 428 (4th Cir. 2008). Moreover, failure to file timely objections will preclude the parties from raising such objections on appeal. Id. “In order ‘to preserve for appeal an issue in a magistrate judge’s report, a party must object to the finding or recommendation on that issue with sufficient specificity so as reasonably to alert the district court of the true ground for the objection.’” Martin v. Duffy, 858 F.3d 239, 245 (4th Cir. 2017) (quoting United States v. Midgette, 478 F.3d 616, 622 (4th Cir. 2007)).

IT IS SO ORDERED AND SO RECOMMENDED.

Signed: April 14, 2021



David C. Keesler
United States Magistrate Judge



¹ Defendant is respectfully advised that “[m]otions shall not be included in response briefs.” See Local Rule 7.1(c)(2).